

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ESPN, INC.,

Plaintiff,

- against -

NORTH POLE US, LLC,

Defendant,
-----X

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08-CV-9483 (CM)

NOTICE REQUESTING RESPONSE TO NOTHPOLE US, LLC'S MOTION FOR
RECONSIDERATION OF THIS COURT'S ORDER GRANTING ESPN'S MOTION
TO REMAND AND FOR ATTORNEYS' FEES

McMahon, J.:

North Pole US, LLC has asked this Court to reconsider its January 22, 2009 Order Granting ESPN's Motion for Remand and for Attorneys' Fees, to the extent that the Court awarded ESPN attorneys' fees. It appears that reconsideration is warranted. The Court overlooked paragraph three of North Pole Ltd.'s Notice of Removal, which identified North Pole Ltd., the Hong Kong corporation, as the sole member of North Pole US, LLC.¹ This means that the Notice of Removal plead diversity and provides North Pole US, LLC with an objectively reasonable basis for removal. This does not alter the fact that the Notice of Removal was untimely, or affect the remand. But it does suggest that the attorneys' fees ought not to have been awarded.

¹ North Pole Ltd.'s Notice of Removal actually refers to a party called "North Pole USA, LLC." The Court assumes that this refers to North Pole US, LLC, as that is what is represented by North Pole US, LLC in its moving papers. (See Defs.' Br. at 7.)

ESPN is therefore directed to submit a response to North Pole US, LLC's motion for reconsideration setting forth why it is nonetheless entitled to its award of attorneys' fees within five (5) business days. If no such response is received, or if ESPN does not set forth an adequate basis for awarding its fees in light of the existence of diversity jurisdiction, the Court will vacate so much of its January 22, 2009 Order as awarded ESPN attorneys' fees.

February 3, 2009



U.S.D.J.